

HOUSE BILL REPORT

ESHB 1553

As Amended by the Senate

Title: An act relating to claims for damages against the state and local governmental entities.

Brief Description: Addressing claims for damages against the state and local governmental entities.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Takko, Goodman, Williams, Hurst, Pedersen and Campbell).

Brief History:

Committee Activity:

Judiciary: 2/2/09, 2/12/09 [DPS].

Floor Activity

Passed House: 3/5/09, 96-0.

Senate Amended.

Passed Senate: 4/16/09, 39-9.

Brief Summary of Engrossed Substitute Bill

- Amends procedures applicable to claims filed against local governments and the state, including requiring the claim to be presented on a standard tort claim form.
- Provides that substantial compliance with the procedural requirements of the claim filing statutes is satisfactory.
- Allows an action to be commenced in court within five days after the expiration of the 60-day period in the claim filing statute.
- Provides that claims involving health care are governed by the medical malpractice statutes.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby and Roberts.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 2 members: Representatives Ross and Warnick.

Staff: Trudes Tango (786-7384)

Background:

A tort claim against either the state or a local government may not be filed in court until the claimant complies with certain notice requirements established in statute, called the "claim filing statute." One of the purposes of the claim filing statute is to allow local governments time to investigate, evaluate, and settle claims prior to the instigation of a civil proceeding.

A tort claim against the state must be presented to and filed with the Risk Management Division of the Office of Financial Management (OFM). A tort claim against a local governmental entity must be presented to an agent designated by the local governmental entity to receive the claims.

The claim must accurately describe the injury or damages, the conduct or circumstances that brought about the injury or damage, the names of all persons involved, and the amount of damages claimed. A claimant may not commence a civil tort action against the state, or against a local governmental entity, until 60 days after the claim is filed. The statute of limitations for the claim is tolled during this 60-day period.

The claimant is required to verify, present, and file the claim. However, if the claimant is incapacitated, a minor, or is a nonresident of the state who is absent when the claim is required to be filed, the claim may be verified, presented, and filed by any relative, attorney, or agent representing the claimant.

Substantial compliance with respect to the contents of the claim is sufficient. In fact, the claim filing statute for the state specifically provides that with respect to the content, the statute should be liberally construed so that substantial compliance is sufficient. However, the courts have generally required strict compliance with the procedural requirements of the claim filing statute and failure to strictly comply leads to dismissal of the action.

Procedures for filing claims for injuries resulting from health care are governed under a separate chapter of the Revised Code of Washington.

Summary of Engrossed Substitute Bill:

Claims against local governments and the state must be presented on a standard tort claim form. The form must be maintained by the OFM and put on its website. Local governments and the state must make the standard form available with instructions on how the form is to be presented along with the name, address, and business hours of the agent authorized to receive the claim. The claim form must not list the claimant's social security number and may not require information that is not specified in the statute. The amount of damages stated on the claim form is not admissible at trial.

For claims against local governments, presentation of a claim is accomplished by delivery to the agent or other person authorized to accept delivery at the agent's office, by registered

mail, or by certified mail with return receipt requested. For claims against the state, presentation of the claim is accomplished by service upon the agent or by registered mail.

For claims against local governments, if the claim form fails to seek the information specified in the statute or incorrectly lists the agent to whom the claim is to be filed, the local government is deemed to have waived any defense related to the failure to provide that specific information or to file with the proper agent.

The claimant does not have to provide his or her residential address six months prior to the time the claim arose, but must state his or her actual residence at the time the claim arose. The claim must be signed either by the claimant (who must also verify the claim), by the claimant's attorney-in-fact under a power of attorney, or by an attorney licensed to practice in Washington.

An action commenced within five business days after the 60-calendar-day period has elapsed will be considered timely.

The claim filing statutes do not apply to claims based on injuries from health care. The procedures established under the medical malpractice statutes apply to those claims. However, when a claim involving health care is filed against the state, a copy of the claim must still be filed with the OFM.

The claim filing statutes are to be liberally construed with respect to the procedural requirements of the statute and substantial compliance will be deemed satisfactory.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

Allows the local government to provide its own tort claim form in lieu of the standard tort claim form created by OFM. Presentation of either form satisfies the claim filing requirement. The local government's form may require additional information beyond the information specified under the bill, but the local government may not deny a claim because the claimant fails to provide that additional information. The local government's form must include instructions on how the form is to be presented, but does not specify who must sign the local government's claim form.

Adds court-approved guardians and guardians ad litem to the list of who may sign the standard tort claim form created by OFM.

Provides more specificity regarding commencing an action after the 60 day period has elapsed. An action commenced within five court days after the 60 calendar day period has elapsed is deemed to have been presented on the first day after the 60 day period, rather than deemed to be "timely."

Provides that presentation of the claim may also be by regular mail with return receipt requested.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Injured plaintiff's claims are being denied because of the strict claim filing statutes. The original intent of the statutes was to provide notice so that the government can get the facts of the claim and investigate. They were not meant to be "gotcha" statutes. Some of the procedural requirements are tricky. Cases are being dismissed based on technical interpretations of the statute. The bill is aimed at restoring the original intent. It corrects historical unfairness and makes the statute functional. It requires notice to the government, but eliminates the barnacles of judicial bureaucracy. The current statutes reward deception hidden in the claim forms. If the purpose is to provide notice, the form should be simple. This bill will make filing claims against local government consistent with state filings. Local governments all have different claim forms.

(Opposed) The statutes work well and people can comply with it. The language regarding dismissal of claims only if there is bad faith and the tolling of the statute of limitations based on a mediation request should be removed. Not allowing the claimant's date of birth on the claim form and not allowing the government to request more information would make it difficult for the government to verify who the claimant is and would make it more difficult for the government to resolve claims. The changes made in this bill will only increase the cost of litigation. Adding five extra days to file a claim will not address the issue of courts not knowing how to calculate when 60 days expire. The case law regarding where claims are filed and how days are counted is clearly established. The state receives numerous medical malpractice claims and it is important that the state continue to receive notice of those claims.

Persons Testifying: (In support) Representative Takko, prime sponsor; Larry Shannon, Charles Kimbrough, and Jim Sellers, Washington State Association for Justice; and Kurt Anagnostou.

(Opposed) John Milton, Washington State Department of Transportation; Tammy Fellin, Association of Washington Cities; Glen Anderson, Office of the Attorney General; and Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.